IN THE
SUPREME COURT OF MISSOURI

BRIAN J. DORSEY,	)	
	)	
Appellant,	)	
	)	
vs.	)	**No. SC 93168**
	)	
STATE OF MISSOURI,	)	
	)	
Respondent.	)	

APPEAL TO THE SUPREME COURT OF MISSOURI
FROM THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI
THIRTEENTH JUDICIAL CIRCUIT, DIVISION 1
THE HONORABLE CHRISTINE CARPENTER, JUDGE

APPELLANT'S REPLY BRIEF

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JURISDICTIONAL STATEMENT

Appellant, Brian Dorsey incorporates herein by reference the Jurisdictional Statement from his opening brief as though set out in full.

STATEMENT OF FACTS

Brian incorporates herein by reference the Statement of Facts from his opening brief as though set out in full.

ARGUMENT

I. Failure to disclose and discover evidence that refuted rape aggravator Brian's claims – that the State failed to disclose, and counsel failed to investigate, the DNA evidence – were preserved, or if not, this Court should consider the merits because the claims were litigated by consent and Rule 55.33 should apply to post-conviction proceedings as it does to all other civil litigation.

The State's response to Brian's claim is that it was not raised in his amended motion(Resp.Br.19). This is clearly wrong. The amended motion alleged:

> Trial counsel received a packet of materials from the State consisting of information furnished by the Missouri State Highway Patrol regarding the DNA testing in Mr. Dorsey's case which was mailed from Robert Sterner's office to Chris Slusher on February 22, 2008. This information from the State did not include any electronic data from the Missouri State Highway Patrol regarding the DNA testing in Mr. Dorsey's case.

(PCR.L.F.42). That claim clearly alleges that the State failed to disclose its data. Brian also clearly alleged that trial counsel failed to adduce evidence from a DNA expert to challenge the statutory aggravators, specifically the two involving the alleged rape(PCR.L.F.34,36). Thus, the State's citation to ***State v. Ferguson***,20 S.W.3d 485,503 (Mo.banc 2000)(Resp.Br.23), is unavailing.

In ***Ferguson***, this Court found a failure to properly plead a ***Brady***[1] violation, where he alleged only that the "'state had in its possession material exculpatory evidence that was not turned over to the defense,'" and did not specify what exculpatory evidence he meant.*Id.* Here, Brian's motion specifically alleged that the State failed to turn over its electronic data. Brian's case is further distinguishable because, as this Court noted in the very next sentence after the part quoted by the State, "Indeed, Ferguson conceded in the motion, itself, that he had no facts to support the claim of withholding evidence." *Id*. Brian, however, alleged specifically what was withheld.

But even if this Court were to agree that this allegation does not plead a ***Brady*** claim, Brian's amended motion and Point Relied On also set out, and Brian argued in his opening brief, a claim of ineffective assistance of counsel, in that counsel failed to request the electronic data and do a complete investigation of the DNA evidence – the foundation of the crucial aggravators involving the alleged rape of Sarah(PCR.L.F.42).

Finally, Brian points out that the State had no objection to the admission of the electronic data at the evidentiary hearing as not being within the scope of the pleadings(Hr.Tr.376). Nor did the State object to any of the testimony or related exhibits concerning the undisclosed peaks contained in the electronic data(Hr.Tr.377-91). Brian admits that, as the State cited, this Court in ***McLaughlin v. State***, 378

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[1] ***Brady v. Maryland***,373 U.S.83(1963).

S.W.3d 328, 340 (Mo. banc 2012), quoted from ***Johnson v. State***, 333 S.W.3d 459, 471 (Mo. banc 2011): "In actions under Rule 29.15, 'any allegations or issues that are not raised in the Rule 29.15 motion are waived on appeal.'" But ***Johnson*** in turn quoted from ***State v. Clay***, 975 S.W.2d 121, 141-42 (Mo. banc 1998), which took the concept from ***State v. Wheat***, 775 S.W.2d 155, 157 (Mo. banc 1989); *overruled on other grounds*, ***Joy v. Morrison***, 254 S.W.3d 885, 888-89 (Mo. banc 2008).

But there is the problem, because ***Wheat*** did not involve an issue of a claim being tried by consent, as is the case here, but rather a complete failure to file a Rule 29.15 motion.775 S.W.2d at 157. Further, in ***State v. Harris***, 870 S.W.2d 798, 815 (Mo. banc 1994), cited in ***Johnson*** for the proposition that, "[p]leading defects cannot be remedied by the presentation of evidence and refinement of a claim on appeal[,]" this Court *reviewed the merits* of Harris's disputed claim where it was tried and ruled upon by the motion court.

This Court has also held that various provisions of the civil rules apply to post-conviction proceedings, including the provisions of Rule 55.03(a) regarding signing of pleadings, ***Tooley v. State***, 20 S.W.3d 519, 520 (Mo. banc 2000); ***Wallingford v. State***, 131 S.W.3d 781, 782 (Mo. banc 2004); ***Glover v. State***, 225 S.W.3d 425, 428 (Mo. banc 2007); and the provisions of Rule 51.10 regarding transfer to the proper venue of a timely filed *pro se* motion, ***Nicholson v. State***, 151 S.W.3d 369, 371 (Mo. banc 2004). Rule 55.33 concerning amendments to the pleadings of issues litigated "by express or implied consent of the parties" should also be applied to post-conviction proceedings, at least under the facts of Brian's case.

"To determine whether a rule of civil procedure is applicable to a Rule 29.15 motion, the court must inquire as to whether the rule of procedure 'enhances, conflicts with, or is of neutral consequence to the purposes of' Rule 29.15." ***Nicholson***, 151 S.W.3d at 371. Permitting the amendment of the pleadings to conform to the evidence as to issues tried by consent – as shown by the State's failure to object to any of the evidence concerning its failure to disclose the electronic data and Wyckoff's deletion of material and exculpatory evidence – enhances the purpose of Rule 29.15 to "avoid 'delay in the processing of prisoners' claims and prevent the litigation of stale claims.'" *Id*.(citation omitted). At worst, there is no conflict.

This is especially true after the United States Supreme Court's decision in ***Martinez v. Ryan***, 132 S.Ct. 1309, 1320 (2012), that the ineffective assistance of counsel in a state's initial-review collateral proceeding does not "bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial." Granting post-conviction litigants in Missouri the same rights that all other civil litigants enjoy would allow the determination of claims as to which the State claims no surprise or prejudice whatsoever. Indeed, post-conviction litigants are the only litigants in Missouri who do not enjoy this right. As mentioned, Rule 55.33 permits other civil litigants to do so, and under Rule 23.08, the State is permitted to amend its pleadings in criminal cases at any time if there is no prejudice to the defendant. The State in post-conviction cases is alone permitted to raise the technicality of a pleading defect despite the absence of prejudice and despite its open-eyed litigation of the claim it later disputes on appeal. Where that lack of prejudice works to keep an otherwise

unjustly convicted prisoner in prison, it is problematic. Where the litigant faces the death penalty, the refusal to consider the merits of his claim is intolerable.

While one may not have a "constitutional or inherent right" to a certain liberty interest, once the state has afforded the opportunity for that interest, due process protections must be invoked to ensure that the state-created right is not arbitrarily denied or abrogated. ***Greenholtz v. Nebraska Penal Inmates***, 442 U.S. 1, 7 (1979). Under the facts of Brian's case, holding that his claim was not correctly pleaded would arbitrarily deny him his right to due process of law.

In its brief response, in a footnote, to the merits of Brian's Point I, the State argues only that, "[t]he allegedly undisclosed evidence proved nothing definitively, and the Y STR DNA profile found on the vaginal swab was still consistent with Mr. Dorsey and not consistent with the other two men who were last in the house before the murders."(Resp.Br.23,n.3). But the undisclosed evidence absolutely *did* prove definitively that there were two peaks – indicators of alleles – that the State's DNA analyst, a Missouri State Highway Patrol employee, deliberately deleted before completing his report for disclosure to the defense. One of those peaks was not present in Brian's DNA, thus excluding him from the arguable mixture of DNA found on the vaginal swab. But both peaks were present in Sarah's husband's DNA.

This evidence strongly suggests that there was no rape, and that the likely explanation for the sperm seen on the swab was that Sarah and her husband had intercourse. The Y-chromosome DNA profile shared by Brian and thousands of other males was present in the sample, but even if it were Brian's DNA, all it showed was

his presence in the house, because there was no way to know whether it came from the sperm in the sample.

Under either the ***Brady*** claim or the ineffectiveness claim, the test is the same: whether confidence in the outcome of the trial has been undermined. ***Kyles v. Whitley***,514 U.S.419,434(1995); ***Deck v. State***,68S.W.3d 418,426 (Mo.banc 2002). The missing DNA evidence, deleted by the State's agent and never requested by trial counsel, undermines confidence as to the jury's consideration of two of the four aggravators as to Sarah(L.F.178). And while the aggravators as to Ben did not include any alleged rape of Sarah(L.F.176), the two murders are inextricably linked in fact and by the common alleged aggravators of the multiple homicide so that undermining confidence as to Sarah does so as to both victims.

For these reasons, and those in his opening brief, Brian asks this Court to vacate his pleas or remand for a new penalty phase.

II. Failure to disclose additional DNA hits through CODIS, and failure to correct prosecutor's false implication

The "revelation" that additional DNA hits may occur at some future point, at some unknown location in the world, does not relieve the State of its burden to disclose results available to it in its CODIS database.

The State's argument that it did not violate ***Brady*** boils down to the claim that there was no failure to disclose the additional hits on the Y-chromosome profile because the State's initial disclosure informed counsel that there would be more hits in the future.(Resp.Br.29). To get to this conclusion, the State overstates the holding of ***United States v. Jones***, 34 F.3d 596, 600 (8th Cir. 1994). The State argues, "When a defendant knows that evidence exists or potentially exists, and '[w]hen information is readily available to the defendant, it is not ***Brady*** material, and the prosecution does not violate ***Brady*** by not discovering and disclosing the information.'"(Resp.Br.29-30), *citing* ***Jones***. Beyond the fact that there is nothing in ***Jones*** to suggest that where a defendant knows that evidence potentially exists the State is relieved of its burden under ***Brady***, the greater problem is that the United States Supreme Court has already rejected the State's argument.

In ***Kyles v.Whitley***,514 U.S.419,437-38(1995), the Court specifically held that, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. But whether the prosecutor succeeds or fails in meeting this obligation (whether, that is, a

failure to disclose is in good faith or bad faith [*citing* ***Brady***]), the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable." This clearly puts the burden on the State, not the defense, to suspect that there may be exculpatory evidence extant, if only they would make the right request. It does not allow an excuse where defense counsel knew that exculpatory evidence *potentially* existed. *Also see*, ***Strickler v.Greene***,527 U.S.263,280-81(1999)(disclosure requirement includes "evidence 'known only to police investigators and not to the prosecutor.'"). The lab at issue was the Missouri State Highway Patrol laboratory, its database of DNA profiles, and its DNA supervisor Brian Hoey. There is no question that he is a police employee, and the information withheld from defense counsel was maintained by the State.

The State hides behind "the computer," arguing that it – the State – did not really possess the information.(Resp.Br.28). This is despite the fact that "the computer" was CODIS: the *Missouri* Combined DBA Index System.(Ex.QQ). The State offers no support for this claim that it does not possess its own database.

It then goes on to quote ***Gill v. State***, 300 S.W.3d 225, 231 (Mo. banc 2009), that "[i]f the defense knew about the evidence at the time of trial, no ***Brady*** violation occurred."(Resp.Br.30). But the defense did *not* know. However, the State *did*. Further, Hoey testified that the information about the other matches was "probably available" to him in August 2008(Hr.Tr.431-32). That is why Brian's claim includes all of the names ultimately disclosed during the course of the post-conviction investigation – the State chose to leave the information buried in its database, because

it was getting too many matches on the Y-chromosome database, thus making it of little investigatory use(Hr.Tr.428-33,459-60). Thus it is not true, as the State claims, that none of the subsequent matches existed at the time of trial.(Resp.Br.32). From Hoey's testimony, the matches were always there; the State simply chose not to extract them from "the computer."

Brian also notes that although the State says that Brian, and "males from a common paternal lineage," could not be eliminated as the source of the Y chromosome (Resp.Br.30), the same is true of each and every man on the final disclosure list, along with all of *their* male relatives, and possibly along with, as Dr.Stetler testified, unrelated males(Hr.Tr.392-94) – and as is likely, men whose DNA was not in CODIS, along with *their* male relatives.

The State misunderstands the nature of Brian's claim when it argues that the evidence of additional matches to the Y-profile would not have countered the State's claim that Brian raped Sarah.(Resp.Br.31-34). But this does not answer the question whether there was a rape at all. With the suppressed evidence of a possible full-profile match to Sarah's husband, and the fact that Brian, Sarah's cousin, was present in the house for a period of time, the possibility of an innocent transfer of skin cells could not be ruled out. Brian need only show a reasonable probability that the jury would have discredited the rape allegation had it been shown evidence of multiple matches, and told of the limited significance of those matches due to the non-discriminating nature of a Y-profile. The evidence that the State did not disclose would have done exactly that.

Finally, the State claims that, because no evidence connected Sim to the alleged rape, his custody status was irrelevant.(Resp.Br.36). This ignores its efforts at trial to get the message to the jury that Sim was indeed in prison – which was not true. If Sim was irrelevant, it could not have been so important as to mislead the jury to take him out of the picture. Therefore, counsel's failure to investigate Sim and object to the State's false impression played right into the prosecutor's hands and let the issue of rape dominate. It is fair to conclude that evidence of four additional hits beyond Brian and Sim would have led the jury to not put much stock in the State's allegations. And whether or not the jury might still have found those aggravators proven beyond a reasonable doubt, that did not mean the jury had to impose death. Any weakening of the State's case would have made a sentence of life more probable.

For these reasons and those in Brian's opening brief, the motion court's findings are clearly erroneous, and this Court should remand for a new penalty trial.

III. Failure to investigate and present evidence of Brian's inability to deliberate and in support of statutory mitigators

The bottom line of this issue is that, until trial counsel investigated Brian's mental status at the time of the murders – which they never did – they were in no position to reasonably believe that "guilt phase was 'going to be difficult'"(Resp.Br.40). They had no way to know whether they had a realistic chance to achieve a second-degree murder verdict because they never took the time to ask a mental health professional to address the issue of diminished capacity. They retained Dr.Smith yet did not direct him to investigate that possibility(Hr.Tr. 44). Had they done so, they would have discovered that Dr.Smith felt Brian was not capable of deliberating (Hr.Tr.59). But counsel could not know that because they did not provide Dr.Smith with Brian's records until shortly before the guilty plea, and Dr.Smith and Brian did not discuss Brian's thoughts before and at the time of the murders, or Brian's substance abuse history, until shortly before the penalty phase trial(Hr.Tr.23-27).

For these reasons, the State's recitation of counsels' testimony about their "investigation" before advising Brian to plead guilty is largely irrelevant, except to show how little thought they gave the issue.(Resp.Br.40-44). Their belief that diminished capacity would be a tough sell to a jury was conjured out of the State's case, not the facts underlying Brian's mental status, because they did not have those facts until, really, the post-conviction hearing. They certainly did not have them

before Brian pleaded guilty, and, because they did not ask Dr.Smith to investigate and did not retain a psychiatrist, they did not have them at trial.

This was purely a gut reaction to the State's evidence, which might be all well and good in a vacuum, but it means little when they chose not to give their guts all the pertinent information. Counsel may have "had Mr. Dorsey's medical records," may have been "aware of his depression diagnosis, . . . had an evaluation completed by a neuropsychologist, and . . . talked to another doctor[2] and determined that he did not need to retain a psychiatrist"(Resp.Br.44), but all of that was done without asking the expert that counsel did retain to investigate such a basic question. Indeed, counsel did not even comply with Dr.Smith's request to interview Brian's parents(Hr.Tr.26-27,44,47-48). Therefore, the State's citation to ***McLaughlin v. State***, 378 S.W.3d 328, 341 (Mo. banc 2012)("counsel is 'not obligated to shop for an expert witness who might provide more favorable testimony'")(Resp.Br.44), is inapposite, because Brian's claim is not simply that some other doctor would have provided more favorable testimony, but that counsels' own expert would have done so had they only asked.[3]

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[2] Slusher actually was not sure whether he spoke to a psychiatrist(Hr.Tr.591-92).

[3] Brian is not abandoning his claim that counsel should have retained a psychiatrist such as Dr.Daniel. His input would not just have been of the "more favorable" variety; rather it was different in kind because he was qualified to evaluate the medical aspects of Brian's condition while Dr.Smith was not. And Dr.Daniel was not

The State asks this Court to declare counsels' non-investigation, based solely on their reaction to the perceived strength of the State's case, to be a reasonable strategy. But to satisfy ***Strickland's*** requirement that counsels' decision *not* to investigate be reasonable, that decision must itself be based on a reasonable professional judgment that supports limiting the investigation. ***Strickland v. Washington***,466 U.S.668,690-91(1984). But counsel did not even take the tiny step of asking their retained expert, Dr.Smith, to evaluate the basic question in a first-degree murder case – the accused's ability to deliberate. Guilt of some of offense may have appeared overwhelming, given Brian's statement to the police that they had the right person, but that does not begin to address the mental culpability element of the offense. Without knowing his status, counsel could not know whether there was a viable defense to first degree murder, which there was, as testified to by both Dr.Smith and Dr.Daniel.

The facts of Brian's case do not begin to approach the State's claim that counsel "had a sufficient understanding of the facts to adequately advise Mr. Dorsey about pleading guilty or going to trial."(Resp.Br.45). Counsel had *no* knowledge as to Brian's inability to deliberate because they never asked Dr.Smith or any other doctor for an opinion on the issue. It is no substitute for such an opinion from a mental health professional to simply say, "well he had to load the gun twice, he must have deliberated," which was all counsel managed to do as far as exercising reasonable

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just "another doctor" – he was a Fulton State Hospital consultant and served as the director of the privatized psychiatric services for the State of Missouri(Hr.Tr.224-25).

judgment. But counsel knew that Brian had a history of major depression and that he abused drugs which exacerbated his condition. Yet they jumped on board for a guilty plea that offered Brian absolutely nothing in exchange. Indeed, Slusher did not recall seriously considering a guilt phase diminished capacity defense(Hr.Tr.591-92). He could not evaluate what he did not even consider.

The State cannot just proclaim that "diminished capacity based on depression was not going to convince the jury."(Resp.Br.46). It does not explain why Brian could not have accepted responsibility for *second*-degree murder and gained just as much favor. Admitting responsibility did not require a plea to first-degree murder without exploring all the possibilities.

Nor is the State's argument about Brian's intoxication relevant to the issue before this Court. The State cites ***State v. Rhodes***,988 S.W.2d 521,526(Mo.banc1999), for the proposition that, "voluntary intoxication may not negate a defendant's mental state or provide an insanity defense absent a separate mental disease that results in diminished capacity without the voluntarily ingested drugs."(Resp.Br.47). But ***Rhodes*** involved a challenge to the sufficiency of the evidence, in which the defendant offered no mental health evidence – he argued only that his intoxication and need to get more drugs to alleviate the pain caused by "crashing" overcame, as a matter of law, the evidence of deliberation. *Id*. That resembles Brian's case only insofar as Brian was also coming down off a drug "high" and sought money to buy more. But Brian has offered extensive evidence of his mental disease aside from his drug addiction, as well as how the two afflictions reinforced each other.

The State continues to bootstrap its argument, claiming that trial counsel's statement that, "'as a practical matter,' diminished capacity was not going to work at Mr. Dorsey's trial[,]" was a reasonable conclusion in light of the "overwhelming" evidence of deliberation(Resp.Br.49-50). Again, this conclusion was not based on a reasonable investigation but solely on a gut reaction to the State's anticipated evidence. It does not benefit the State to recite evidence that might support a guilty verdict, because the issue is not what evidence the State had, but rather what evidence trial counsel failed to seek out. A jury could have accepted Dr.Smith's and Dr.Daniel's testimony that Brian's ability to deliberate was severely impaired, even though in the absence of such evidence a challenge to the sufficiency of the evidence would have been without merit. The State ignores the standard that under ***Strickland***, Brian need only show a reasonable probability of a different outcome. This does not mean more likely than not, as the State's argument would suggest. ***Deck v.State***,68 S.W.3d418,426 (Mo.banc 2002).

The State also fails to acknowledge that the evidence of inability to deliberate went not only to guilt and the validity of Brian's pleas, but also to mitigation. And even if the evidence of his intoxication would have been limited as to guilt it was nonetheless mitigating. Brian's story as a whole belies that he is the sort of person who would commit murder, let alone murder a cousin he loved. He further had no history of sexual deviance, making the alleged rape even more out of character(Hr.Tr.297-98,300,307-08). The combination of his mental disease and cocaine and alcohol addictions was mitigating, and had counsel reasonably

investigated, they would have discovered that Brian's mental health issues went well beyond what they presented.

The State's discussion of ***Wiggins v. Smith***,539U.S.510(2003) ***Williams v. Taylor***,529U.S.362(2000), ***Rompilla v. Beard***,545U.S.374(2005), and ***Hutchison v. State***,150S.W.3d292(Mo.banc2004) (Resp.Br.57-61), really points out how like Brian's case they are. He will not repeat his discussion from his brief at length, but simply points out that in all cases, counsel's investigation was found to be deficient, despite their having investigated and/or presented mitigating evidence, including at least some expert mental health evidence. Thus, just presenting some evidence does not preclude a finding that counsel fell below an objective standard of reasonableness. ***Hutchison***,150S.W.3d at 307(counsel was ineffective for failing to present a thorough comprehensive expert presentation, despite counsel's having called a psychologist and Hutchison's mother to testify about his learning disability and special education, counsel was ineffective for failing to investigate and present records and additional expert testimony).

Finally, despite the State's suggestion to the contrary, there would have been nothing inconsistent in presenting the legitimate, and compelling, mitigation evidence that Brian presented in the post-conviction case, and also presenting Brian's genuine remorse for what he admittedly did.

For these reasons and those in Brian's opening brief, this Court should reverse for a trial on guilt or at a minimum for a new penalty hearing.

V. Failure to object to "junk science" or to counter it.

The problem with the State's argument is that it does not take the totality of the evidence into consideration. Between Nichols and the prosecutor, the State clearly presented an opinion that Brian poured bleach on Sarah in an attempt to hide a rape. But the State sees Nichols's testimony as innocuous, stating only that he smelled bleach and saw what looked like a "our pattern," and that these are within the knowledge of laypeople(Resp.Br.76-78).

This ignores that Nichols's testimony carried a false aura of scientific validity, with his alternative lighting and proclamation that something had been poured on Sarah – rather than something had spilled on her or she poured something on herself. The State undertook no investigation whether bleach would produce the effects seen by the officer, nor has the State ever explained Brian's purpose in trying to hide a rape while admitting that he killed two people. The State's theory made no sense, and if it had had to justify it scientifically, it could not have done so, because Brian demonstrated in the post-conviction case that at least one other substance – beer, which was present at the scene – will fluoresce on the skin under that same lighting.

The State's theory also did not explain how, if Brian or anyone poured bleach on Sarah so as to discolor the carpet, it did nothing to the flowered sheet on which she was lying.(Ex.PPP-1,PPP-2).

As Brian stated in his opening brief, the State's case concerning the alleged rape began with flawed DNA evidence that it actively hid from defense counsel, was aided

by counsel's failure to investigate and the State's failure to disclose additional persons who matched the Y-profile, then culminated in the junk science insinuation of a cover-up that lacked any scientific support. Between this and the failure to present evidence to the contrary, Brian was denied effective counsel and he is entitled to a new sentencing trial.

CONCLUSION

For the reasons stated in Points I, III, and VII, herein and in his opening brief, Brian Dorsey asks this Court to reverse and remand for a trial on guilt, or in the alternative, a new penalty trial. For the reasons stated in Points II, IV, V, and VI, herein and in his opening brief, Brian asks the Court to remand for a new penalty trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I, Kent Denzel, hereby certify as follows:

The attached reply brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word, in 13 point Times New Roman font, and includes the information required by Rule 55.03. According to the word-count function of Microsoft Word, excluding the cover page, the signature block, this certificate of compliance and service, and appendix, the brief contains 4,780 words, which does not exceed the 7,750 words allowed for a reply brief.

On the 2nd day of December, 2013, the foregoing reply brief was filed through the E-file system for delivery to Shaun J Mackelprang, Assistant Attorney General. The electronic file has been scanned for viruses using Symantec Endpoint Protection, updated in December, 2013, and according to that program, the file is virus-free.

/s/ *Kent Denzel*
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